

Remarks:

Claims 1-9 are currently pending in the application. By this amendment, claim 1 is canceled, claims 2, 4-6, and 8 are amended to correct claim dependency, claim 9 is amended to correct an inconsistency, and new claims 10-15 have been added. Claim 10 replaces canceled claim 1 and more clearly defines the claimed aspect of the invention.

Applicants believe the amendments made herein add no new matter. Any amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based on prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to be attached thereto.

Reconsideration and reexamination of the application is respectfully requested in view of the amendments and the following remarks.

Claims 1-3 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the admitted prior art in view of Griffin et al. The rejection is respectfully traversed.

The rejection of claim 1 is moot as it is canceled from the application. However, since claim 10 replaces canceled claim 1, the rejection will be addressed with respect to claim 10.

Paragraphs 2-4 of the specification describe a known refrigerator having a shelf that divides the refrigeration compartment of the refrigerator into two or more zones having different temperatures. The shelf is provided with an electronic control circuit for setting the temperature in the portion of the compartment above the shelf. An inductor or an antenna for the transmission of data to the electronic control circuit is embedded in the insulated wall of the refrigerator.

Griffin et al. discloses a refrigerator having a modular refrigeration unit comprising a self-contained, pre-assembled module 22. The module 22 includes an evaporator 24 for cooling, a fan 26 for circulating air between the compartments 18, 20 of the refrigerator, a main support housing 27 on which the fan 26 is arranged, a drain pan member 30, a control assembly 32, and a defrost heater 34.

The standards for a finding of obviousness must be strictly adhered to. Simply citing one or more prior art references that illustrate different facets of the invention and then concluding that it would be obvious to combine the references to create the applicant's invention is wholly inadequate.

A claimed invention is unpatentable if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art....The ultimate determination of whether an invention would have been obvious under 35 U.S.C. §103(a) is **a legal conclusion based on underlying findings of fact.**¹

A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field....Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."

Most if not all inventions arise from a combination of old elements....Thus, every element of a claimed invention may often be found in the prior art....However, **identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention**....Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, **there must be some motivation, suggestion or teaching of the desirability of making the specific combination** that was made by the applicant....Even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference.

¹ The underlying factual inquiries include (1) the scope and content of the prior art; (2) the level of ordinary skill in the prior art; and (3) the differences between the claimed invention and the prior art. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 15 L. Ed. 2d 545, 86 S. Ct. 684 (1966).

The motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved....In addition, the teaching, motivation or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references....The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art....Whether the Patent Office Examiner relies on an express or an implicit showing, **the Examiner must provide particular findings related thereto....Broad conclusory statements standing alone are not "evidence."**

In Re Werner Kotzab, 217 F.3d 1365; 55 U.S.P.Q.2d (BNA) 1313 (Fed. Cir. 2000)(citations omitted)(emphasis added).

The Office Action fails to identify any motivation, suggestion, or teaching of the desirability of modifying the admitted prior art with the modular refrigeration unit of Griffin et al. to reach the claimed invention. The Office Action makes the combination on false logic and a mischaracterization of the teaching of Griffin et al. This is best illustrated by breaking down the arguments in the office action. The mischaracterization of the teaching of Griffin et al. arises when the modular refrigeration unit is described as a “movably mounted pre-assembled package (see Fig. 5) that is installed in the rear of a refrigerator in order to facilitate the assembly of the refrigerator.” To describe the modular refrigeration unit as a movably mounted pre-assembled package overstates the teaching of Griffin et al. The mischaracterization takes a specific teaching of a modular refrigeration unit and converts it into a generic movably mounted pre-assembled package.

The false logic arises when the Office Action states that “It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the admitted prior art system such that it included the use of a movably mounted package including the inductors and their corresponding electronic components in order to facilitate the assembly of the refrigerator view of the teachings of Griffin.” This obviousness statement erroneously modifies the already mischaracterization of Griffin et al by adding the inductors to a generic movably

mounted pre-assembled package. In these two steps of the obviousness argument in the Office Action the modular **refrigeration unit** as taught by Griffin et al. has become a movably mounted pre-assembled package with inductors. Somewhere along the way in making the combination, the Examiner has dropped the specific teaching of the refrigeration unit of Griffin et al. The refrigeration unit of Griffin et al. has been replaced with inductors. There is no teaching or suggestion in either the admitted prior art or Griffin et al. for such a dramatic change of replacing the refrigeration unit with inductors.

The combination as made in the office action can only be explained away as being based on hindsight reconstruction. The office action has taken the claim language from claim 1 of a removably inserted package comprising a plurality of inductors, ignored the inductors limitation, found a prior art refrigerator with a removable refrigeration unit, abstracted the specific teaching of a modular refrigeration unit into a generic removable package in an effort to reach the claim language, and then replaced the modular refrigeration unit with the inductors. This is clear hindsight reconstruction.

The Office Action gets into the erroneous combination by ignoring the basic elements required for a combination. The Office Action makes no attempt to analyze whether the knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to one of ordinary skill in the art as required for a showing of motivation as required in a *prima facie* obviousness rejection. This is clear in that the Office Action fails to provide any particular findings related to any motivation, suggestion, or teaching of the desirability of adding the modular refrigeration unit with the admitted prior art and then somehow replacing an entire refrigeration unit with inductors. Rather, the Examiner has simply relied upon “broad conclusory statements standing alone” that the combination would be obvious, which can only lead to the conclusion that the Examiner is simply relying on impermissible hindsight reconstruction of Applicants' invention.

Therefore, the combination of the admitted prior art and Griffin et al. is improper and the rejection fails accordingly.

Assuming, *arguendo*, that a proper combination of the admitted prior art and Griffin et al. can be made, the proper combination will not reach claim 10, making claim 10 patentable.

A proper and correct combination of the admitted prior art and Griffin et al. would result with admitted prior art refrigerator having a removable refrigeration unit and the inductors still embedded in the wall of the refrigerator.

Claim 10 calls for a refrigerator having a control unit and defining a refrigeration compartment in which is received a shelf with a user interface and an antenna package removably inserted in the compartment with at least one antenna for receiving and transmitting data from the control unit to the user interface. The combination does not disclose an antenna package removably inserted in the compartment with at least one antenna for receiving and transmitting data from the control unit to the user interface. Thus, the combination is completely missing one of the claimed elements and claim 10: an antenna package removably inserted in the compartment.

There is no teaching or suggestion in either the admitted prior art or Griffin et al. to move the inductors from their embedded state in the wall and put them in a removable antenna package or add them to the refrigeration module. One of ordinary skill in the art would not think that the refrigeration modular and the antenna are interchangeable as they perform entirely different functions. The refrigeration module provides the chilled air for cooling the compartment and the antenna is part of the data communications for the control unit. The knowledge required for each of the systems is different. The refrigeration technology is quite different than the data communications technology. Therefore, it is submitted that the missing element of the antenna

package is not obvious in view of the combination and claim 10 is patentable over the combination. Dependent claims 2-9 and 11-15 are also patentable for the same reasons as claim 10.

Claim 15 is also not obvious as it calls for a panel that is inserted in the refrigeration compartment in front of the rear wall to define a volume therebetween and in which the antenna package is received. No such panel and corresponding volume are disclosed by the combination.

Claim 8, which depends from claim 15, is also patentable over the alleged combination in that claim 8 calls for both the antenna package and an evaporator of the refrigeration unit are received in the volume.

Claims 4 and 6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of Griffin et al. as applied to claim 1 in the Office Action, and further in view of Tatter. The rejection is respectfully traversed.

Tatter discloses a refrigerator having a housing and an external controller 14 with a display for displaying storage conditions in compartments 32, 34, 36 of the refrigerator. The controller 14 is also used to set the storage conditions in each compartment 32, 34, 36.

Claims 4 and 6 depend directly from claim 10. As the addition of Tatter to the base combination of the admitted prior art and Griffin et al. does not address the shortcomings of the base combination, claim 10 is not obvious and patentable over the second combination of the admitted prior art, Griffin et al, and Tatter. Because claims 4 and 6 depend from claim 10, claims 4 and 6 are patentable over the second combination for the same reasons that claim 10 is patentable over the base combination.

Assuming, *arguendo*, that the second combination is tenable, the second combination will not reach claims 4 or 6, making claims 4 and 6 patentable.

A combination of Tatter with the admitted prior art and Griffin, and Tatter would result in a refrigerator having a single controller on the outside of the refrigerator and not a refrigerator having controllers on each removable food support element inside the refrigeration compartment. Furthermore, there is no teaching or suggestion in Tatter of an internal controller and it would not have been obvious to move the controller from the external housing of the refrigerator to a food support element located inside the refrigeration compartment. In fact, Tatter teaches away from a internal controller, saying that "It would be most convenient if the aforementioned displays and settings were available for view and setting on the exterior of the refrigerator for convenience, observation and setting of the storage compartment conditions without need to open the door of the refrigeration unit" (Col. 2, Lines 23-27).

Claim 4 calls for a refrigerator comprising at least one removable food support element positioned within a refrigerator compartment and having a user interface. The external controller of the second combination does not reach claim 4, which requires the user interface located on the food support. Therefore, the combination does not reach claim 4, and claim 4 is patentable.

Like claim 4, claim 6 calls for a refrigerator having at least one removable food support element positioned within a refrigerator compartment and having a user interface. Accordingly, the same argument for patentability over the combination of Tatter with the admitted prior art and Griffin made above with respect to claim 4 can be applied to claim 6. Therefore, claim 6 is patentable for the same reasons that claim 4 is patentable.

Claims 5 and 7 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of Griffin et al. as applied to claim 1 in the Office Action, and further in view of Yoshikawa et al. The rejection is respectfully traversed.

Yoshikawa discloses a refrigerator 1 having a storage compartment 2 and a freezer compartment 3. A cooler 10 in the form of a plate supporting an evaporator coil is provided in the freezer compartment 3 and is equipped with a temperature sensor 24. The sensor 24 detects the temperature of the cooler 10 or the surface of food placed on the cooler 10. A second temperature sensor 30 is provided at a suitable location on the outer wall, door, bottom, or upper portion of the refrigerator for detecting the ambient temperature.

Claims 5 and 7 depend directly and indirectly, respectively, from claim 10. As the addition of Tatter to the base combination of the admitted prior art and Griffin et al. does not address the shortcomings of the base combination, claim 10 is not obvious and patentable over this third combination of the admitted prior art, Griffin et al, and Tatter. Because claims 4 and 6 depend from claim 10, claims 4 and 6 are patentable over the third combination for the same reasons that claim 10 is patentable over the base combination.

Assuming, *arguendo*, that the third combination is tenable, the third combination will not reach claims 5 and 7, making claims 5 and 7 patentable.

The addition of Yoshikawa to the base combination would result in the addition of a temperature sensor used to detect the temperature of the support or the food placed on the support, not to detect the actual working conditions of the compartment.

Claim 5 calls for a refrigerator having at least one removable food support element positioned within a refrigerator compartment and having a user interface, where the removable

food support element comprises one or more sensors for providing the user and the control unit of the refrigerator with a feedback on the actual conditions in the refrigerator compartment

Therefore, the combination does not reach claim 5, and claim 5 is patentable.

Claim 7 depends directly from claim 5 and is therefore patentable from the same reasons that claim 5 is also patentable.

Claims 8 and 9 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of Griffin et al. as applied to claim 1 in the Office Action, and further in view of Negishi. The rejection is respectfully traversed.

Negishi discloses a refrigerator 1 having an inner separation member 12 defining an inner storage space S. A rear space 131 is separated from the storage space S, and is defined by a rear element 123 and a rear wall 103 of the refrigerator. A connecting hole 123c is formed in the rear element 123 to allow air flow between the storage space S and rear space 131. An evaporator 33 is disposed in the rear space 131.

As the addition of Negishi to the base combination of the admitted prior art and Griffin et al. does not address the shortcomings of the base combination, claim 10 is not obvious and patentable over the fourth combination of the admitted prior art, Griffin et al, and Negishi. Because claims 8 and 9 depend from claim 10, claims 8 and 9 are patentable over the second combination for the same reasons that claim 10 is patentable over the base combination.

It is respectfully submitted that all of the claims in the application are in condition for allowance. Early notification of allowability is respectfully requested. If there are any questions regarding this matter, please contact the undersigned attorney.

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Respectfully submitted,

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By: /Mark A. Davis/
Mark A. Davis, Reg. No. 37,118
McGARRY BAIR PC
171 Monroe Avenue, NW, Suite 600
Grand Rapids, Michigan 49503
616-742-3500

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